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Stilwyn, Inc. v. Roka Corp. Appellant's Reply Brief Dckt. 41451

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IN THE SUPREME COURT FOR THE STATE OF IDAHO

STILWYN, INC.,

Appellant,

vs.

ROKAN CORPORATION, et al.,

Respondents/Cross-Appellants.

Supreme Court No. 41451-2013

Blaine Co. Case No. CV 2011-785

CROSS-APPELLANT IDAHO FIRST BANK'S OPENING BRIEF

Appeal from the District Court of the Fifth Judicial District of the
State of Idaho, in and for the County of Blaine

The Honorable Jonathan Brody, Presiding

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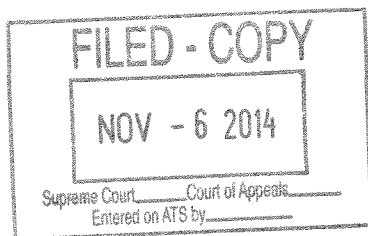


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ARGUMENT

Arguing against a straw man, Stilwyn mischaracterizes Idaho First's argument regarding its entitlement to attorney fees. Without citation, Stilwyn claims that Idaho First's "primary" argument is that "application of *res judicata* always results in a finding of frivolity or unreasonableness."¹ This is not Idaho First's actual argument. Rather, in accord with clear case authority, Idaho First has consistently noted that once a defense of *res judicata* is "blatantly apparent," further litigation is frivolous, warranting an award of attorney fees. *Burns v. Baldwin*, 138 Idaho 480, 487, 65 P.3d 502, 509 (2003), *citing*, *Cole v. Kunzler*, 115 Idaho 552, 558, 768 P.2d 815, 821 (Ct. App. 1989).

And, it was blatantly apparent that *res judicata* applied in this matter. Stilwyn had to know that, after its heavy involvement in the Federal Case, there were *res judicata* implications to its self-announced intent to pursue remedies in another forum "to avoid issues regarding its claims." R., Vol. IV, p. 867-868. The District Court itself noted the self-conscious nature of this maneuver: "[Stilwyn] chose to join the Federal Case, it assumed it had the ability to assert the claim, it saw there was opposition and apparently tried to maneuver past the opposition." Memorandum Decision Granting Defendants Motion for Summary Judgment, filed July 19, 2013 at p. 9. Stilwyn's "maneuver," however, was without adequate foundation in law.

While a district court's determination as to whether an action was brought frivolously may be subject to an abuse of discretion standard, *Idaho Military Hist. Soc'y, Inc., v. Maslen*,

¹ Appellant's Reply Brief, p. 22 (emphasis in original).

156 Idaho 624, 630, 329 P.3d 1072, 1078 (2014), this is not a case where the minutiae of a party's conduct at the trial level is the focus of the inquiry. Nor does this case present mixed questions of law and fact. Instead, the issue here is the relative clarity of the applicable law of *res judicata* with regard to the facts of this case. Idaho First submits that the District Court exaggerated just how debatable the legal arguments were and thus abused its discretion.

The District Court's own analysis of *res judicata* demonstrates that Idaho First's entitlement to that defense was blatantly apparent:

Plaintiff has two main arguments. One is that because there were no claims against it, it did not have to file its claims as counterclaims. This analysis contradicts the language of the rule and is not consistent with case law suggesting that counterclaims need not be raised in certain actions. The Federal Case was not merely a declaratory judgment or attachment case. It started that way in state court, but after removal to federal court, the FDIC filed a counterclaim. There was nothing about the suit to prevent Plaintiff from litigating its claims. The federal court action was not merely a declaratory judgment case, Stilwyn entered the case as a party as a matter of right. It had the same opportunity to bring claims as the other parties. This is demonstrated by Stilwyn's statements 'confirming' its status as a count-claimant joining the FDIC's counterclaim. Stilwyn nevertheless argues it never had its day in court or final judgment on the claims.

Reviewing the filings in the federal case, Stilwyn failed to assert the counterclaim until late in the litigation. The opposition to allowing Stilwyn to join the FDIC's counterclaim focused on the timeliness of raising the issue. Stilwyn then withdrew the motion. The motion to join or confirm status in the FDIC was never denied. After intervening, Stilwyn cannot simply pick and choose where and when to file its claims. It chose to join the Federal Case, it assumed it had the ability to assert the claim, it saw there was opposition and apparently tried to maneuver past the opposition. The claim had to be raised there and then. It is even possible the court would have allowed Stilwyn to pursue the counterclaim despite its untimeliness under the scheduling order. Clearly the Federal District Court could get


jurisdiction over all parties and resolve all the claims. Stilwyn chose to join the fray in the Federal Court and must live with the consequences.

R., Vol. V, p. 1098 - 99.

In light of Stilwyn's extensive participation in the Federal case, it is blatantly apparent that *res judicata* applied to this action. The District Court should have recognized the ease with which it came to the same conclusion and found that Stilwyn's insistence on pursuing its claims was without adequate foundation at law and awarded Idaho First attorney fees.

RESPECTFULLY SUBMITTED This ^{6th}~~6~~ day of November, 2014.

THOMAS, WILLIAMS & PARK, LLP

A handwritten signature in cursive script, appearing to read "Wm H Thomas", written over a horizontal line.

William H. Thomas

Attorney for Respondent/Cross-Appellant

CERTIFICATE OF SERVICE

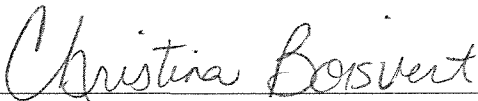
I hereby certify that on this 11th day of November, 2014, a true and correct copy of the foregoing instrument was served on the following persons as indicated below:

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